Attorney General
Betty D. Montgomery

February 13, 1997

Via Overnight Mail

Office of the Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: *In the Matter of Access Charge Reform* CC Docket No. 96-262.

Dear Mr. Caton:

Enclosed please find the original and 17 copies of the Reply Comments of the Public Utilities Commission of Ohio in the above-referenced matter. Please return a time-stamped copy to me in the enclosed stamped, self-addressed envelope. Also, please find enclosed the WordPerfect 5.1 Windows ROM diskette containing the Reply Comments.

Thank you for your assistance in this matter.

Respectfully submitted,

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cc: International Transcription Services, Inc.
Competitive Pricing, Common Carrier Bureau

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BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262
	)	
Price Cap Performance Review for Local Exchange Carriers	)	CC Docket No. 94-1
	)	
	)	
Transport Rate Structure and Pricing	)	CC Docket No. 96-263
	)	

REPLY COMMENTS OF THE PUBLIC UTILITIES COMMISSION OF OHIO

INTRODUCTION AND BACKGROUND

The Public Utilities Commission of Ohio (PUCO) hereby submits its reply comments pursuant to the Federal Communication Commissions (FCCs) Notice of Proposed Rulemaking (NPRM) in CC Docket No. 96-262 (In the Matter of Access Charge Reform) (FCC 96-488). In this proceeding, the FCC seeks comments on reforming its system of interstate access charges to make it compatible with the competitive paradigm established by the Telecommunications Act of 1996 (1996 Act) and with state actions to open local networks to competition. The FCC maintains that the structure and dynamics of the 1996 Act now necessitate a review of its existing access charge regulations to ensure that they are compatible with the 1996 Acts far-reaching changes.

The FCC's NPRM in this investigation proposes specific access reform for price cap incumbent local exchange carriers (ILECs), rate structure

modifications, and two alternative approaches to access reform (*i.e.*, a market-based approach and a prescriptive approach to reform). The NPRM also identifies a variety of specific transitional issues and other miscellaneous issues and requests input on these issues. The PUCO's reply comments are limited to responding to selected portions of the initial comments filed in this proceeding by companies that operate in Ohio, as well as the comments of the National Association of Regulatory Commissioners (NARUC). Reply comments in this investigation are due at the FCC on or before February 14, 1997.

The PUCO's reply comments address the following topics: (1) separations issues (2) cost recovery of the carrier common carrier line (CCL); (3) recovery of the residual interconnection charge (RIC); (4) the advantages of the market-based approach over the prescriptive approach to access reform; (5) terminating access charges; and (6) jurisdictional issues.

DISCUSSION

Separations Docket

The PUCO concurs with NARUC that separations reform, through a Joint Board, must occur before or concurrent with access reform. NARUC Comments at 6-8. Even the FCC seems to acknowledge that there must be a Joint Board separations review. FCC NPRM at ¶ 6. In particular, the PUCO agrees with NARUC that access reform must be synchronized with universal service efforts so that universal support revenues included within current access rates are not inadvertently eliminated. NARUC Comments at page 7. The PUCO emphasizes that the need for access reform is great and therefore any reviews should be done in a timely fashion. The PUCO cautions that,

although the LEC is the entity which has the burden of proof, other parties' participation should not be undermined in these reviews.

The Subscriber Line Charge

The PUCO observes that AT&T, Sprint, and GTE recommend to the FCC that any traffic-sensitive charges assessed to interstate service providers through the CCL charge should be recovered through flat fees assessed to end-users. AT&T Comments at 8; Sprint Comments at 11; and GTE at 27,28. Ameritech supports the FCC's proposal to removal of the SLC cap for multi-line business customers and residential lines beyond the primary line. Ameritech notes, however, that when the cap is lifted, corresponding costs should be removed from the CCL charge. Similar to the position taken by these companies, NARUC maintains that CCL loop costs should not continue to be recover through a minute of use traffic sensitive CCL charge. NARUC Comments at 3. NARUC does not agree, however, that it would be appropriate to impose these costs on end-users through increases in the SLC.

The PUCO agrees with NARUC that loop costs assigned to the federal jurisdiction currently recovered through the CCL charge should not be recovered though increases in the SLC. The PUCO notes that the net effect of any SLC increase would simply result in a shift in cost recovery from interstate service providers to end-users. Expressed another way, the PUCO maintains that the net effect of a SLC increase to local end-users is to require these customers to subsidize the interstate service providers' use of the local loop, which – not unlike local switching – provides interstate service providers with access to their customers. The fact that the loop cannot be measured directly for usage should not be taken to imply that the interstate service providers should not be required to pay their fair share of the cost and

corresponding charges for the use of this crucial segment of the local exchange network. If the FCC believes it is appropriate to charge interstate service providers for originating and terminating access, transport, and tandem access, logic dictates that these carriers should also be responsible for compensating the LECs for their use of the local loop. Any belief otherwise is a convenient leap in logic that defies rationality.

Additionally, as mentioned in its initial comments, the PUCO maintains that assessing an increased SLC on second lines only serves to discourage access to the Internet and other state-of-the-art computer services. PUCO Initial Comments at 3. That result is clearly not consistent with Congress' desire to bring the benefits of the information age to every telephone subscriber.

As an alternative to eliminating the SLC cap for any type of customer (*i.e.*, residential or nonresidential, primary lines or secondary lines), the PUCO continues to maintain that a bulk billing approach should be utilized as a means to recover costs associated with the portion of the local loop currently recovered through the CCL. Under this form of billing, interstate service providers would not be assessed traffic-sensitive charges for their use of the local loop, but would be assessed flat rate charges based on factors such as the number of pre-subscribed customers or total revenues. The PUCO continues to believe that the FCC should base such assessments on the interstate service providers' total revenues.

Ameritech supports the FCC's belief that it may be appropriate to deaverage SLCs in an attempt to avoid implicit subsidies due to the existence of different costs to provide local loops in different service areas. Ameritech Comments at 12,13. As mentioned in its initial comments in this proceeding,

the PUCO observes that it may be necessary to deaverage the rate for the SLC in an ILEC's service territory based on differing loop costs. PUCO Initial Comments at 4. The PUCO, continues to believe, however, that any deaveraged SLC must be priced equal to or below today's existing price caps. Any additional resulting revenue shortfall from deaveraged SLCs (if any) should be included in the alternative method of CCL cost recovery adopted by the FCC in this proceeding.

Transport Interconnection Charge

Ameritech maintains that the transport interconnection charge (TIC) should be treated consistently with its role of supporting local exchange rates. Specifically, Ameritech maintains that all TIC related charges must be removed from end office switching. Ameritech contends that TIC charges associated with tandem switching must be relocated back to the tandem switch. The remainder of the TIC charges not connected to tandem access should be bulk billed to interstate providers. Ameritech also recommends to the FCC that states should begin and conclude proceedings that allow ILECs to recover the portion of the loop and line port costs from end users' rates or state universal service funding mechanisms, which are currently being subsidized by (in part) TIC revenues. Ameritech comments at 20-23.

The PUCO maintains that, prior to eliminating the TIC, the FCC must require all ILECs to thoroughly demonstrate the amount of costs currently in the TIC that should be redistributed to tandem access charges. Only then should these charges be relocated to tandem switching. Additionally, the PUCO questions the rationale behind Ameritech's recommendation to the FCC concerning the intrastate recovery of TIC-related charges that are assigned to the state jurisdiction. The PUCO maintains that the level and

method of recovery of intrastate costs that are assigned to the intrastate jurisdiction must be determined by the individual states.

The Market-Based Approach to Access Reform

AT&T opposes the FCC's market-based approach to access reform. AT&T Comments at 49. AT&T advocates the prescriptive method arguing it will result in substantial, immediate reductions to access costs to the interstate service providers, which in turn, will lead to lower cost to the end users. MCI supports the prescriptive approach to access reform noting that interstate service providers' access related savings will be passed on to end users. MCI Comments at page 6-18. Ameritech supports the market-based approach to access reform, and agrees that artificially low rates set through the prescriptive approach will actually thwart competition in the provision of access services. Ameritech Comments at 36-45,48. Time Warner also supports the market-based approach to access reform. Time Warner Comments at 17-41.

The PUCO continues to support the market-based approach to access reform. The PUCO agrees with Ameritech that the prescriptive approach to access reform may lead to artificially low rates that could actually impede competition in the access services marketplace. Moreover, the PUCO believes the prescriptive method to access reform will result in added regulation which will be applied where market forces will eventually exist. As an interim measure (or additional safeguard) until access services competition is pervasive, however, the PUCO recommends that the FCC should require that the access charges of the price cap ILECs be capped at levels subject to the current price cap mechanism established by the FCC in CC Docket No. 94-1 (*In the Matter of Price Cap Performance Review for Local Exchange Carriers*).

The PUCO maintains that rates set subject to the 94-1 mechanism will continue to ensure that interstate service providers are provided access services at reasonable rates. The price floor for any access should not be permitted to be set below the total element long run incremental cost (TELRIC) for that service plus a reasonable contribution toward joint and common costs. The PUCO has determined that a 10% adder is an appropriate proxy for these joint and common costs. The PUCO maintains that these additional recommended safeguards in conjunction with the FCC's market-based approach to access reform are appropriate safeguards to protect both consumers and potential competitors.

The PUCO also observes that if ILEC access services are required to be provided to interstate service providers at rates that are set significantly lower (*i.e.,* below current price cap levels) pursuant to the prescriptive approach, there is no guarantee that commensurate rate reductions will be passed on to their end-user customers. This is true because interstate service providers' interstate toll services are not subject to any to rate review.

AT&T further argues that the prescriptive approach is mandatory and that the market-based approach is inadequate because the 1996 Act requires the FCC to establish access charges at TELRIC levels, by virtue of Section 251(c)(2)'s reference to "exchange access." AT&T Comments at 12. The PUCO submits that AT&T's reliance on Section 251(c)(2)'s reference to "exchange access" to support this conclusion is misguided. An examination of the phrase in its proper context clearly demonstrates that neither Section 251 or 252 governs the setting of interstate access charges by the FCC.

Section 251(c)(2) only governs an ILEC's duty to provide interconnection with its network. The rates for interconnection must be set

in accordance with Section 252(d). 47 U.S.C. § 251(c)(2). In other words, only those rates relating directly to interconnection (*i.e.*, physical or virtual collocation and rates relating to interconnection at any technically feasible point) must be set in conformity with the requirements of Section 252(d). The reference in Section 251(c)(2) to "telephone exchange service and exchange access" simply connotes the ultimate purposes served by network interconnection. Section 252(d), entitled "Pricing Standards," makes very clear that which is already implied under the proper interpretation of Section 251(c)(2): by its direct terms, the pricing standards only apply to interconnection charges and network element rates, not access charges. 47 U.S.C. § 252(d)(1).

Following the logic employed in AT&T's interpretation of Section 251(c)(2) would also suggest that the FCC can and must now set rates *for telephone exchange* service using TELRIC. That conclusion is, of course, ludicrous and is not advocated by any party. The reference in Section 251(c)(2) to "telephone exchange service and exchange access" merely clarifies that the purpose of interconnection is for the transmission and routing if local and toll services.

Finally, it is also critical to note that the FCC in this NPRM has not based any of its conclusions or the whole premise for initiating this docket on the novel and tortuous interpretation that AT&T advances (*i.e.*, that the 1996 Act affirmatively requires access charge reform based upon the pricing standards in Section 252(d)). Consequently, no notice or request for comment has been given regarding such an approach.

The NPRM, in fact, acknowledges that Section 252(d) does not apply to access charges. In the introduction, the NPRM outlines the requirements of

the 1996 Act and, although it outlines the specific legal requirements for the interconnection and universal service dockets, it suggests only that the context and presence of local competition precipitates a general need to reform access charges. NPRM at ¶¶ 11-5. More to the point, the FCC directly concluded "as a legal matter" that access charges are governed by 47 U.S.C. §§ 201-202, *not the pricing provisions of Section 252 of the 1996 Act.* NPRM at ¶ 9. The need for access charge reform is simply not required by, nor governed by, the pricing provisions of Section 252(d).

Accordingly, the FCC should not endorse or rely upon the passing argument asserted by AT&T relative to Section 251(c)(2)'s cross-reference to "exchange access."

The Regulation of Terminating Access

Time Warner indicates that there is no need to regulate terminating access provided by competitive carriers. Time Warner Comments at 49. Time Warner notes that while there are potential abuses associated with overcharging for terminating access, there is no indication that this will actually occur. Therefore, the FCC should not impose unnecessary regulations on new entrants that would be destructive, add to the cost of entry, and inhibit further the development of competition. MCI submits that terminating access charges cannot be brought down to economic cost even in a competitive market. MCI Comments at 35.

The PUCO, consistent with its original comments filed in the docket, agrees with MCI's observation that there is a continued need for the regulation of terminating access prices regardless of the level of competition for access services, since long distance carriers have little or no control on whose network their calls will terminate. To address potential pricing abuses

for terminating access, the PUCO continues maintain that the FCC should adopt a policy that requires *all carriers*, including new entrants, to cap terminating access rates at levels that are set equal to or below their originating access rate for that same customer that they are providing originating access. The PUCO does not understand how such a requirement could be construed to be a barrier to competition by a new entrant, if that new entrant truly does not to intend to abuse the bottleneck inherent to the provision of terminating access service.

No FCC Jurisdiction Over Intrastate Access Charges

Telco Communications Group (TCG) urges the Commission to "direct the states to adopt intrastate access charges that are substantially similar to interstate rates" and recommends that the Commission "require parity of inter- and intrastate access charges." TCG Comments at 2, 4. The PUCO submits that TCG's recommendations should be rejected, as they are clearly contrary to law. In addition, TCG's approach is inconsistent with the express intentions stated in the NPRM. Because TCG fails to offer any viable legal or policy argument to support such a novel and unorthodox approach, TCG's recommendation in this regard should be rejected or simply ignored.

The PUCO will not repeat all of the legal and policy arguments set forth in the Commission's interconnection proceeding supporting the conclusion that the Commission has no jurisdiction over intrastate rates. It is sufficient in this context to say that, through its comments, the PUCO established that the 1996 Act does not convey intrastate rate jurisdiction to the FCC. *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, PUCO Comments (Phase I) at 2-20. The FCC's lack of jurisdiction over intrastate

interconnection charges is firmly based upon 47 U.S.C. § 152(b), §§ 251(d)(3) and 601(c) of the 1996 Act, and *Louisiana Pub. Serv. Comm'n. v. FCC*, 476 U.S. 355, 374-375 (1986), all of which yield the same conclusion in this proceeding relative to intrastate access charges.

The FCC, of course, is also well aware that the stay order suspending its rate regulations that was issued by the United States Court of Appeals for the Eighth Circuit makes clear that the FCC does not have jurisdiction over intrastate rate matters. *Iowa Utilities Board et al. v. FCC*, No. 96-3321 (October 15, 1996). Finally, it is clear from the NPRM's discussion of jurisdictional separations that the FCC did not intend to raise such jurisdictional conflicts, nor did it raise any such controversial issues for comment. Accordingly, TCG's attempt to persuade the FCC to take actions that are clearly beyond its jurisdiction should be rejected or simply ignored.[1]

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[1] The FCC should be aware in this context that the PUCO is currently engaged in deciding issues relating to the reasonableness of existing intrastate access charges. The PUCO has currently pending before it a complaint filed by AT&T against Ameritech Ohio concerning the reasonableness of Ameritech's intrastate access charges. PUCO Case No. 96-336-TP-CSS. The PUCO has agreed to decide this case by August 31, 1997. The PUCO's comments in this docket regarding interstate access charges should not be construed to restrict or otherwise affect any determinations to be made in PUCO Case No. 96-336-TP-CSS or related matters.

CONCLUSION

Accordingly, the PUCO urges the FCC to incorporate the above reply comments into its decision in this proceeding. The PUCO wishes to thank the FCC for the opportunity to file reply comments in this proceeding.

Respectfully submitted,

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